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6 **UNITED STATES BANKRUPTCY COURT**
7 **EASTERN DISTRICT OF WASHINGTON**

8 In re:

9 Case No. 18-03197 FPC 11

10 GIGA WATT, Inc., a Washington
10 corporation,

11 Chapter 11

12 Debtor.

13 **MEMORANDUM OF POINTS AND
13 AUTHORITIES IN SUPPORT OF
13 CHAPTER 11 TRUSTEE'S MOTION
13 FOR ORDER APPROVING
13 SETTLEMENT WITH PORT**

14 Mark D. Waldron, in his official capacity as the Chapter 11 Trustee (the
15 “**Trustee**”) hereby respectfully submits this Memorandum of Points and
16 Authorities in support of the *Chapter 11 Trustee’s Motion for Order Approving*
17 *Settlement With Port* (the “**Motion**”) pursuant to which the Trustee requests
18 approval of that certain *Settlement Agreement and Release* (the “**Agreement**”),
19 between, Mark D. Waldron, in his capacity as the Chapter 11 Trustee (the
20 “**Trustee**”) acting on behalf of and representing the estate (the “**Estate**”) in the
21 above-captioned bankruptcy case and the Chelan Douglas Regional Port
22 Authority, formerly the Port of Douglas County (the “**Port**”).

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24 Memo in Support of Motion to Approve Port Settlement -- 1

In support of the Motion, the Trustee respectfully avers:

I. INTRODUCTION

3 The Agreement resolves a dispute with the Port regarding equipment that
4 the Debtor had left on the Port's property. It provides a full general release
5 between the Estate and the Port.

II. BACKGROUND, DISPUTE, AND SETTLEMENT

7 On August 9, 2017, the Port and Giga Watt, Inc. (the “**Debtor**”) entered
8 into that certain *Land Lease for Portion of Pangborn Airport Business Park East*
9 *Wenatchee, Washington* on March 1, 2017 and that certain *Addendum to Lease*
10 *Agreement Pangborn Airport Business Park East Wenatchee, Washington*
11 (collectively, the “**Lease**”). Pursuant to the Lease, the Debtor leased four adjacent
12 lots of land (the “**Pangborn Site**”) that are in a business park by the Pangborn
13 Airport that the Port manages. Pursuant to the Lease and pre-petition, the Debtor
14 deposited \$350,000 in cash with the Port as surety.

On November 19, 2018, the Debtor commenced the above-captioned case by filing a petition for relief under chapter 11 of the United States Code, section 101, *et seq.*.

18 On January 23, 2019, the Court approved the appointment of the Chapter 11
19 Trustee pursuant to the *Order Approving Appointment of Chapter 11 Trustee*,
20 dated January 23, 2019. [ECF 146] Shortly after his appointment, the Chapter 11
21 Trustee visited the Pangborn Site. He observed a very wide and deep hole in lots
22 adjacent to the Pangborn Site. The Trustee verified that the Debtor had dug this
23 hole with the Port's permission. However, the Debtor had left the hole without the

1 Port's permission. The Pangborn Site itself was littered with very heavy
2 equipment, partially built cement foundations, partially constructed buildings,
3 fully completed buildings and conduit buried under the ground with wiring.

4 On February 15, 2019, the Port filed in the Bankruptcy Case a proof of
5 claim, assigned no. 65, asserting the right to payment of \$662,994.09 on a general
6 unsecured basis (the "**Proof of Claim**").

7 On April 16, 2019, the Court entered its Order approving a stipulation (the
8 "**Stipulation**") between the Port and the Estate. [Doc. No. 276] Pursuant to the
9 Stipulation, the Port was entitled to apply the \$350,000 surety deposit to clean up
10 the premises and the Trustee's deadline to assume or reject the Lease was
11 extended to June 17, 2019. After the Public Utility District No. 1 of Douglas
12 County, Washington decided not to rescind the termination of the related power
13 contract, the Lease was deemed rejected by operation of the Stipulation.

14 The Lease was rejected on June 17, 2019. However, post-rejection, the
15 equipment remained on the Pangborn Site. The Port claimed that the Estate was
16 holding over and that administrative rent would continue to accrue at the monthly
17 rate of approximately \$7,500, excluding taxes that the Port alleged were also due.

18 On November 14, 2019, the Court entered its Order approving another
19 stipulation (the "**Second Stipulation**") between the Port and the Estate. Pursuant
20 to this Second Stipulation, the Trustee agreed that the Port could apply the
21 remaining portion of the surety deposit (\$81,000) to further remediation of the
22 Pangborn Site. [Doc. No. 417]

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24 Memo in Support of Motion to Approve Port Settlement -- 3
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1 On March 30, 2020, the Trustee moved for approval to sell the equipment at
2 the Pangborn Site. [Doc. No. 519] The Port objected on the ground that the
3 proposed sale made no provision for cleaning up the Pangborn Site and that it
4 allowed the buyer to “cherry pick” which equipment to take and which equipment
5 to leave on the Pangborn Site. [Doc No. 527]

6 The Port has further asserted that it is entitled to administrative rent from
7 June 17, 2019, when the Lease was rejected, until the Trustee clears the Pangborn
8 Site. For the period June 17, 2019 to April 30, 2020, the total administrative rate is
9 approximately \$80,000, not including taxes which the Port claims are applicable
10 pursuant to the triple net provisions of the Lease.

11 The Agreement resolves all issues between the parties. In exchange for a
12 full general release from the Port of all claims, the Estate will pay \$22,500 to the
13 Port and fully release the Port of all claims.

14 **III. POINTS AND AUTHORITIES**

15 **A. Standard for Approving a Settlement**

16 Rule 9019(a) provides that, “[o]n motion by the trustee and after notice and
17 a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P.
18 9019. To be approved, the settlement should be in the best interests of the estate
19 and “reasonable, given the particular circumstances of the case.” *In re A & C*
20 *Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). While a court generally gives
21 deference to a trustee’s business judgment in deciding whether to settle a matter,
22 the Trustee “has the burden of persuading the bankruptcy court that the
23 compromise is fair and equitable and should be approved” *Id.*

1 In determining the “fairness, reasonableness and adequacy” of a proposed
2 compromise, a bankruptcy court must consider:

3 (a) The probability of success in the litigation; (b) the
4 difficulties, if any to be encountered in the matter of
5 collection; (c) the complexity of the litigation involved,
6 and the expense, inconvenience and delay necessarily
attending it; [and] (d) the paramount interest of the
creditors and a proper deference to their reasonable
views in the premises.

7 *A&C Properties*, 784 F.2d at 1381 (quoting *In re Flight Transportation*
8 *Corporation Securities Litigation*, 730 F.2d 1128, 1135 (8th Cir. 1984) (citations
9 omitted), *cert. denied*, 469 U.S. 1207, 105 S.Ct. 1169, 84 L.Ed.2d 320 (1985)).

10 “When assessing a compromise, courts need not rule upon disputed facts and
11 questions of law, but rather only canvass the issues.” *In re Schmitt*, 215 B.R. 417,
12 423 (B.A.P. 9th Cir. 1997).

13 **B. The Agreement Meets Each of the *A&C Properties* Factors.**

14 **1. *Probability of Success on the Merits Weighs in Favor of***
15 ***Settlement.***

16 It was prohibitively expensive to move and store the Debtor’s equipment
17 that was left at the Pangborn Site. Further, the Trustee understood that the
18 equipment was valuable.

19 The Port stated that it was unable to re-let or even market the property while
20 the equipment remained on the Pangborn Site. Furthermore, it alleged that the
21 Estate was liable for administrative rent, which by April 30, 2020 totals about
22 \$80,000.

1 The settlement breaks the impasse. In exchange for a payment of \$22,500,
2 the Estate is absolved of all obligations to clean up the Pangborn Site or pay
3 further administrative rent. The Trustee has recently sold the equipment for
4 \$175,000 and has agreed to pay the Port's settlement out of these proceeds.

5 Therefore, the probability-of-success-on-the-merits factor weighs in favor
6 of the settlement.

7 **2. *Collectability.***

8 Collectability is not at issue because the Estate did not assert claims against
9 the Port.

10 **3. *Litigation Would Be Complex, Expensive, Inconvenient and
11 Would Cause Delay.***

12 Litigation would likely have increased the Estate's administrative rent
13 burden and diverted the Estate's limited resources from the pending TNT Facility
14 sale and windown of the Moses Lake Facility.

15 Therefore, the complexity-expense-inconvenience-delay factor weighs in
16 favor of the proposed settlement.

17 **4. *The Settlement Serves the Paramount Interest of the Creditors
18 and Provides Proper DefERENCE to Their Reasonable Views.***

19 The Agreement serves the paramount interest of creditors by resolving the
20 distraction, expense and uncertainty that was inherent in the dispute with the Port.
21 A consensual relationship with the Port allows the Trustee to focus on closing the
22 sale of the TNT Facility and wind down the Moses Facility.

Therefore, this paramount-interest-of-creditors and proper-deference factor weighs in favor of the proposed settlement.

Finally, entering into the Agreement is an exercise of sound business judgment pursuant to 11 U.S.C. § 363.

IV. CONCLUSION

WHEREFORE, the Trustee respectfully requests entry of an Order:

1. Granting the Motion;
 2. Approving the Agreement and the settlement embodied therein;
 3. Authorizing the Trustee to perform pursuant to the terms of the

10 || Agreement; and

4. Granting such other and further relief as the Court deems necessary
1st.

13 || Dated: May 5, 2020

POTOMAC LAW GROUP PLLC

By: /s/ Pamela M. Egan
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